

ESTTA Tracking number: **ESTTA270697**

Filing date: **03/06/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92044697
Party	Defendant Martello, Jeannette
Correspondence Address	Jeannette Martello 701 Fremont Avenue South Pasadena, CA 91030 UNITED STATES drmartello@hotmail.com, martello@skindeepworld.com
Submission	Opposition/Response to Motion
Filer's Name	Jeannette Martello, M.D.
Filer's e-mail	drmartello@hotmail.com
Signature	/jeannette martello, m.d./
Date	03/06/2009
Attachments	OPPOSITION OF MOTION TO COMPEL FILE(1).pdf (11 pages)(980242 bytes) OPPOSITION DECLARATION FILE(1).pdf (4 pages)(271691 bytes) EXHIBITS 1-13.pdf (13 pages)(18449821 bytes)

1 JEANNETTE MARTELLO, M.D.
2 701 Fremont Avenue
3 South Pasadena, CA 91030
4 Telephone: (626) 403-1747
5 Facsimile: (626) 403-1784

6 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
7 THE TRADEMARK TRIAL AND APPEAL BOARD

8 ACM Enterprises, Inc.)	Cancel No. 92044697
)	
9 Petitioner)	Filed: March 5, 2009
)	
10)	
11 Against)	RESPONDENT'S OPPOSITION TO
)	MOTION TO COMPEL
12)	MOTION FOR A PROTECTIVE ORDER
)	MOTION TO STAY DISCOVERY
13 Martello, Jeannette, M.D.)	
)	
14 Respondent)	
)	
15)	

1 Déjà vu. Petitioner's attorney has used the exact same bad faith, dilatory
2 tactics at the last minute on three separate occasions. Delay tactic number 1: On
3 December 22, 2005, an extension of time was granted. Plaintiff's trial testimony period was to
4 start on April 22, 2006. A Motion to Compel Discovery was filed by Petitioner on
5 April 21, 2006 after a single last-minute phone call was made to Respondent's attorney on
6 April 20, 2006. Delay tactic number 2: Over a year later, an extension of time was requested
7 on June 30, 2007. Plaintiff's trial testimony period was set to start on August 4, 2007. Plaintiff
8 filed a Motion for Summary Judgment on Friday, August 3, 2007 with exhibits that were
9 mailed separately on Saturday August 4, 2007 replete with a Certificate of Mailing signed by
10 attorney David Hong in accordance with 37 CFR § 2.197(a)(1)(A)(ii) that "the person signing
11 the certificate should have reasonable basis to expect that the correspondence would be mailed
12 or transmitted on or before the date indicated." This is incredible considering the fact that
13 page 12 of Hong's 216 pages of exhibits was printed off from the TARR web server at
14 19:03:12 ET 4:03 p.m. PST) on Friday, August 3, 2007 whilst the mailing post office closed
15 at 4:30 p.m. on August 3, 2007. The exhibits for the Motion for Summary Judgment were
16 received in Virginia on Monday, August 6, 2007 at 11:28 a.m. Delay tactic number 3: On
17 September 17, 2008, a three month extension of time was granted. The Plaintiff's trial
18 testimony period was set to start on February 15, 2009. On February 14, 2009, Petitioner filed
19 this Motion to Compel.

20 This Second Motion to Compel presents yet another refrain in Petitioner's ongoing effort to
21 engage Respondent in frivolous motion practice over irrelevant time-consuming discovery
22 disputes. Petitioner has attempted to divert resources and attention away from the fact that
23 Petitioner ACM has absolutely no standing. This Motion for a Protective Order and for a Motion
24 to Stay Discovery to review a dispositive Motion for Summary Judgment is germane to the
25 present Motion to Compel. Respondent has recently discovered that Petitioner had no standing
26 to bring this Petition for Cancellation to the Trademark Trial and Appeal Board in the first place
27 and Petitioner still has no standing to this day. This newly discovered evidence will render the
28

1 Motion to Compel as well as all other proceedings moot once the Trademark Trial and Appeal
2 Board has had a chance to review the evidence submitted with the dispositive Motion for
3 Summary Judgment.

4 Petitioner's Motion to Compel should be denied because further discovery would be
5 unduly burdensome and oppressive. Furthermore, Respondent believes that the discovery
6 requested is unreasonably cumulative, irrelevant or duplicative [Fed.R.Civ.P. 26].

7 See *Red Wing Co. v. J.M. Smucker Co.*, 59 USPQ2d 1861 (TTAB 2001). Respondent
8 respectfully requests a Motion for a Protective Order and for a Motion to Stay Discovery since
9 Respondent has discovered through newly revealed evidence that Petitioner lacked standing to
10 file the initial Petition for Cancellation in 2005. Petitioner lacks standing to this day. Therefore,
11 all Discovery that Petitioner seeks is the fruit of the same ill-begotten tree of deceit and fraud in
12 its initial filing of the Petition for Cancellation with the Trademark Trial and Appeal Board.

13 The Trademark Trial and Appeal Board has been more than patient in granting numerous
14 extensions of time. In order to prevent further waste of the Trademark Trial and Appeal Board's
15 time, Respondent respectfully requests a Motion for a Protective Order as well as a Motion to
16 Stay Discovery so that the Trademark Trial and Appeal Board may have a chance to review and
17 decide upon a dispositive Motion for Summary Judgment. The fact that the discovery period
18 would have ended within mere hours if Petitioner had not filed this Motion to Compel argues
19 that this stay would not be prejudicial to the Petitioner. This Motion for Summary Judgment is
20 germane to the present Motion to Compel since Respondent has recently discovered that
21 Petitioner had no standing to bring this Petition for Cancellation to the Trademark Trial and
22 Appeal Board in the first place. This newly discovered evidence will render the Motion to
23 Compel as well as all other proceedings moot once the Trademark Trial and Appeal Board has
24 had a chance to review the evidence submitted with the Motion for Summary Judgment.

25 Petitioner has forced Respondent to go on a wild goose chase to ferret out a sham Berger
26 Medical Corporation by failing to produce complete documentation regarding the business
27 relationship between Petitioner and Dr. Saul Berger. This illegal business relationship was
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1 documented in a Facilities and Management Services Agreement that was 14 pages in length.
2 Pages 1 and 14 were provided to Respondent with a redacted page 4 that was produced after
3 much prodding. (Exhibit, pages 1 through 9). This bogus Berger Medical Corporation was
4 formed to break California law, specifically the Moscone Knox Act that governs professional
5 corporations. Respondent has had to independently hire agencies to obtain California Secretary
6 of State documents on a rush basis so as to unveil the extent to which Petitioner has broken laws
7 as well as to unveil the fact that Petitioner had absolutely no standing to have brought forth this
8 Petition for Cancellation in the first place. Respondent has expended in excess of \$ 30,000 on
9 attorney's fees in this case in order to defend Respondent's Registration. It would be prejudicial
10 to Respondent if this Motion for Summary Judgment were not reviewed. Furthermore, it is in
11 the interest of justice and in the interest of the economics of time that the Trademark Trial and
12 Appeal Board stay discovery and review this dispositive Motion for Summary Judgment.

13 **MOTIVE FOR BAD FAITH AND DILATORY TACTICS**

14 The motives and reasons for Petitioner's conduct via these bad faith dilatory actions
15 became apparent only after Respondent completed arduous discovery which revealed that
16 Petitioner has never had standing to file a Petition for Cancellation. Petitioner's counsel had
17 been uncooperative in producing information that would have allowed this discovery to have
18 occurred at an earlier point in the proceeding. (Exhibit, pages 1 through 9). Petitioner ACM is
19 not a professional corporation. Petitioner ACM is not a licensed practitioner. Therefore,
20 according to California Business and Professions Code Sections 2285 and 2415, Petitioner has
21 been illegally using the name Skin Deep Laser Med Spa in violation of these codes. (Exhibit,
22 pages 10 through 13). It follows that Petitioner had no standing and continues to not have
23 standing to this day. According to the Medical Board of California, a lay person can not be a
24 partial owner of a fictitious name permit (question 17). Fictitious name permits can only be
25 issued to professional medical corporations (question 18) and physicians may only be partners
26 with other physicians (question 20). Additionally, fictitious name permits are not transferrable
27 (question 14). (Exhibit, pages 34 through 44)

1 Petitioner has perpetrated a fraud on the Trademark Trial and Appeal Board by
2 intentionally misrepresenting material facts in this case regarding standing as well as the dates of
3 first use anywhere and the date of first use in interstate commerce. On December 1, 2003, Colin
4 Hurren as President of Petitioner ACM declared that he had never used the name Skin Deep
5 Laser Med Spas, Inc. as of that date. (Exhibit, pages 14 through 16). Yet in Petitioner's Petition
6 for Cancellation that was filed subject to the penalties set forth under 18 U.S.C. 1001, Petitioner
7 alleged a date of first use of September 1, 2003. Lastly, Petitioner has unclean hands since it is
8 being investigated for California sales tax evasion. According to the letter from Mr. Charles
9 Cao, Business Taxes Compliance Specialist, "every person engaged in the business of selling
10 tangible personal property is required to hold a permit for each place of business in this state at
11 which transactions relating to sales are customarily negotiated with his or her customers."
12 (Exhibit, pages 17 through 18). Petitioner has sold skin care at its location for five years.

13 Petitioner has violated The California Knox Moscone Act, The California Corporations
14 Code as well as multiple California Business and Professions Code Sections. These California
15 laws govern professional corporations, advertising and holding oneself out as practicing
16 medicine as well as aiding and abetting the unlicensed practice of medicine. (Exhibit, pages 19
17 through 27). This evidence is further presented in the dispositive Motion for Summary
18 Judgment. Petitioner ACM is guilty of the illegal medical spa business activity that is
19 documented on the Medical Board of California's website and coined "rent-a-license".
20 (Exhibit, pages 28 through 43).

21 **DISCOVERY**

22 In good faith, Respondent has provided over 500 plus pages of printed documentation to
23 Petitioner, including but not limited to a canvas bag, pens, emails, magazines, stationary and
24 actual audiotapes and CD's of Respondent's "Skin Deep" radio show.

25 Petitioner has not acted in good faith. According to 37 CFR §2.120(d)(1), interrogatories
26 are to be limited to 75. In order to get around this requirement, Petitioner went on a fishing
27 expedition and demanded admissions to 93 requests for admissions. Petitioner simply
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manipulated the wording of his questions so that an interrogatory could instead be viewed as an admission instead (since there is no statutory limitation on the number of requests for admissions a party can pose to another). Since the Trademark Trial and Appeal Board has proposed the limitation of interrogatories to 25; limitation of admissions to 25 and document production to 15 items (although these limitations are not in effect at this time), it appears that these are the numbers that the Trademark Trial and Appeal Board appear to be reasonable to accomplish discovery. Needless to say, Respondent has a good faith belief that the discovery requested is unreasonably cumulative, irrelevant or duplicative, etc. [Fed.R.Civ.P. 26]. *See Red Wing Co. v. J.M. Smucker Co.*, 59 USPQ2d 1861 (TTAB 2001).

The burden is on the party seeking the information to establish why it is relevant. *See Red Wing Co. v. J.M. Smucker Co.*, 59 USPQ2d 1861, 1863(TTAB 2001). Petitioner's attorney David Hong has never been able to adequately explain why the answers to the interrogatories and admissions that he compels in this Motion to Compel are relevant. On page three of his February 28, 2007 letter addressed to Respondent's attorney Brandon Tesser, he wrote, "I will need to follow up on our reasons why these questions deal with discoverable topics for this instant proceeding and require a response." (Exhibit, pages 45 through 47). If attorney Hong needed to get back to Respondent's attorney Tesser on "our reasons why these questions deal with discoverable topics", there is no good faith legal basis for this discovery. Over one month later, on March 21, 2007, Petitioner's counsel answered Respondent's counsel's question regarding the relevancy of the discovery material. In his long-winded ten page letter replete with circular reasoning and voluminous citations, Petitioner's attorney Hong answered what he believed the relevancy was for the discovery sought. (Exhibit, pages 48 through 57).

Petitioner has never met his burden to show the relevancy of the discovery sought. Nevertheless, Respondent, in good faith, admitted to requests for admissions numbers 50 and 63.

MOTION TO COMPEL ANSWERS TO INTERROGATORIES

For over three years, Petitioner's attorney David Hong has known the identity and location of Sara Herrick. Attorney David Hong has contacted Sara Herrick via telephone at her

1 place of business in the past. The Interrogatories that Petitioner's attorney has requested involve
2 information that is available and "obtainable from some other source that is more convenient",
3 namely from Sara Herrick. See TBMP 402.02. Over these three long years, Petitioner could
4 have easily noticed and deposed Sara Herrick for a discovery deposition. Not once has Petitioner
5 done so or even attempted to do so. Nevertheless, the requests for answers to interrogatories 21
6 to 23 are irrelevant and moot since Respondent's first legal use anywhere and first legal use in
7 interstate commerce predates Petitioner's alleged date of illegal first use anywhere and illegal
8 first use in interstate commerce, regardless of the assignment of Sara Herrick's common law
9 rights in Skin Deep Skin Care.

10 **MOTION TO COMPEL ADMISSIONS**

11 Discovery is limited to obtaining discovery regarding any matter that is relevant to the
12 claim or defense of any party. The following admissions are not reasonably calculated to lead to
13 the discovery of admissible evidence.

14
15 Request for Admissions 21 through 23 ask for admissions regarding whether or not
16 Respondent believes that microdermabrasion, treatment of acne and cleansing and exfoliation of
17 the skin are categorized as health spa services. These requests for admissions are irrelevant and
18 are not reasonably calculated to lead to the discovery of admissible evidence. The requests are
19 overbroad and improperly seek expert opinions and conclusions. The requests constitute
20 incomplete and/or improper hypothetical questions. The requests call for speculation to the
21 extent they seek information outside Respondent's personal knowledge.

22 RFA 21. Admit that healthspa services include microdermabrasion.

23 RFA 22. Admit that healthspa services include treatment for acne.

24 RFA 23. Admit that healthspa services include cleansing and exfoliation
25 of the skin.

1 Request for Admission 50. This request for admission is irrelevant and is not reasonably
2 calculated to lead to the discovery of admissible evidence. Additionally, the request is vague and
3 ambiguous as to the phrase “type of entertainment service.”

4 RFA 50. Admit that the “Skin Deep” radio program is a type of entertainment service.
5

6 Request for Admission 51: This request for admission is irrelevant and is not reasonably
7 calculated to lead to the discovery of admissible evidence. The request is overbroad and
8 improperly seeks expert opinions and conclusions. The request is vague, ambiguous and non-
9 specific as to which “patient” is being referred to.

10 RFA 51: “Admit that Respondent Jeannette Martello as a licensed California physician
11 must perform a good faith in-person examination of a patient or of the patient’s records before
12 providing medical or physician services to the patient.”
13

14 Request for Admission 52: This request for admission is irrelevant and is not reasonably
15 calculated to lead to the discovery of admissible evidence. The request is overbroad and
16 constitutes an incomplete and/or improper hypothetical question. The request is vague,
17 ambiguous and non-specific as to which “caller” is being referred to.

18 RFA 52: “Admit during Respondent Jeannette Martello’s “Skin Deep” radio program,
19 the Respondent cannot confirm whether a caller to her program is reporting accurate or truthful
20 information during the radio show.”
21

22 Request for Admission 53: This request for admission is irrelevant and is not reasonably
23 calculated to lead to the discovery of admissible evidence. The request is overbroad and
24 constitutes an incomplete and/or improper hypothetical question. Additionally, the request
25 improperly seeks expert opinions and conclusions. The request is vague, ambiguous and non-
26 specific as to which “patient” is being referred to.
27
28

1 RFA 53: "Admit that a good faith in-person examination of a patient enhances the
2 opportunity for a physician to confirm if a patient needs a certain medication or treatment."

3
4 Request for Admission 54: This request for admission is irrelevant and is not reasonably
5 calculated to lead to the discovery of admissible evidence. The request is overbroad and
6 constitutes an incomplete and/or improper hypothetical question. Additionally, the request
7 improperly seeks expert opinions and conclusions. The request is vague, ambiguous and non-
8 specific as to which "patient" is being referred to.

9 RFA 54: "Admit that a good faith in-person examination of a patient enhances the
10 opportunity for a physician to confirm the suspected medical conditions."

11
12 Request for Admission 55: This request for admission is irrelevant and is not reasonably
13 calculated to lead to the discovery of admissible evidence. The request is overbroad and
14 constitutes an incomplete and/or improper hypothetical question. Additionally, the request
15 improperly seeks expert opinions and conclusions. The request is vague, ambiguous and non-
16 specific as to which "patient" is being referred to.

17 RFA 55: "Admit that a good faith in-person examination of a patient enhances the
18 opportunity for a physician to advise the patient of alternative treatment options and to determine
19 if the patient is aware of potential side effects."

20
21 Request for Admission 56: This request for admission is irrelevant and is not reasonably
22 calculated to lead to the discovery of admissible evidence. The request is overbroad and
23 constitutes an incomplete and/or improper hypothetical question. Additionally, the request
24 improperly seeks expert opinions and conclusions. The request is vague, ambiguous and non-
25 specific as to which "patient" is being referred to.

26 RFA 56: "Admit that a good faith in-person examination of a patient enhances the
27 opportunity to rule out other medical conditions."

1 Request for Admission 71: This request for admission is irrelevant and is not reasonably
2 calculated to lead to the discovery of admissible evidence. The request is overbroad and
3 constitutes an incomplete and/or improper hypothetical question. Additionally, the request
4 improperly seeks expert opinions and conclusions. The request is vague and ambiguous as to the
5 phrase “look for”. This request calls for speculation in that it seeks matters outside of
6 Respondent’s personal knowledge.

7 RFA 71: Admit that listeners of the radio show SKIN DEEP look for Dr. Jeannette
8 Martello, M.D., in So. Pasadena, CA.

10 Request for Admission 72: This request for admission is irrelevant and is not reasonably
11 calculated to lead to the discovery of admissible evidence. The request is overbroad and calls for
12 speculation in that it seeks matters outside of Respondent’s personal knowledge.

13 RFA 72: “Admit that looking up the terms “Skin Deep” on the Yahoo.com Yellow Pages
14 for the Pasadena, CA location, the search results list “Skin Deep Lazor [id] Med Spa,” 425 South
15 Fair Oaks Avenue, Pasadena, CA 91105.

17 CONCLUSION

18 Respondent therefore respectfully requests a Motion for a Protective Order and for a
19 Motion to Stay Discovery since Respondent believes that the discovery requested is
20 unreasonably cumulative, irrelevant or duplicative [Fed.R.Civ.P. 26]. See ***Red Wing Co. v. J.M.***
21 ***Smucker Co.***, 59 USPQ2d 1861 (TTAB 2001).

22 Furthermore, Petitioner’s attorney has filed this Motion to Compel without good faith
23 legal basis. Petitioner’s attorney has filed this Motion to Compel for improper purposes such as
24 to harass Respondent and cause unnecessary delay and needlessly increase the cost of litigation
25 as he has done on two prior eleventh hour occasions.

1 Respondent shall transmit said dispositive Motion for Summary Judgment. Respondent
2 respectfully requests that the Trademark Trial and Appeal Board review said Motion for
3 Summary Judgment since it has a valid basis of disposing of the case at hand and to do so would
4 not be prejudicial to the Petitioner.

5 The undersigned being warned that willful false statements and the like are
6 punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful
7 false statements and the like may jeopardize the validity of the application or document or
8 any registration resulting therefrom, declares that all statements made of her own knowledge
9 are true; and all statements made on information and belief are believed to be true.

10 I declare under penalty of perjury under the laws of the State of California
11 and the laws of the United States of America that the above is true and correct.

12 Executed on March 5, 2009 in South Pasadena, California.

13
14 DATED: March 5, 2009

15 In the interests of justice and efficiency.

16 Respectfully,

17 By:/jeannette martello, m.d./

18 Jeannette Martello, M.D.

19 Respondent

20 In Pro Per
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1 JEANNETTE MARTELLO, M.D.
2 701 Fremont Avenue
3 South Pasadena, CA 91030
4 Telephone: (626) 403-1747
5 Facsimile: (626) 403-1784

6 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
7
8 THE TRADEMARK TRIAL AND APPEAL BOARD

9 ACM ENTERPRISES, INC.,) Cancellation No. 92044697
10)
11 Petitioner,) Filed March 5, 2009
12)
13 vs.)
14)
15 JEANNETTE MARTELLO, M.D.,)
16)
17 Respondent)
18)
19)
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22)
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29
30 DECLARATION OF JEANNETTE MARTELLO IN SUPPORT OF
31
32 RESPONDENT'S OPPOSITION TO MOTION TO COMPEL
33
34 MOTION FOR PROTECTIVE ORDER
35
36 MOTION FOR STAY OF DISCOVERY
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1 1. My name is Jeannette Martello, M.D., J.D. and I am representing myself in pro per for
2 Respondent Jeannette Martello, M.D. My business address is 701 Fremont Avenue, South
3 Pasadena, CA 91030. I am fully competent to make this declaration, and I have personal
4 knowledge of the facts stated in this declaration. To my knowledge, all of the facts stated in
5 this declaration are true and correct.

6 2. I declare that this is a true and complete copy of the March 3, 2008 letter written by
7 Respondent's previous attorney, Brandon Tesser to Petitioner's attorney, David Hong on
8 March 3, 2008 as well as the fax transmission cover sheet and proof of fax transmission.
9 Exhibit pages 1 through 3.

10 3. I declare that this is a true and complete copy of the March 3, 2008 email written by
11 Petitioner's attorney, David Hong to Respondent's previous attorney, Brandon Tesser.
12 Exhibit pages 4 through 5.

13 4. I declare that this is a true and complete copy of the March 12, 2008 letter written by
14 Petitioner's attorney, David Hong to Respondent's previous attorney, Brandon Tesser.
15 Exhibit pages 6 through 9.

16 5. On February 14, 2009, I performed a computer search on the Google search engine
17 for California code. The following website was encountered: [http://www.leginfo.ca.gov/cgi-](http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=64770824239+1+0+0&WAIAction=retrieve)
18 [bin/waisgate?WAISdocID=64770824239+1+0+0&WAIAction=retrieve](http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=64770824239+1+0+0&WAIAction=retrieve). Research was
19 performed on fictitious names and Business and Professions Code Sections 2285 and 2415
20 were found. Exhibit pages 10 through 13.

21 6. I declare that I personally drove down to Norwalk, California to the Los Angeles
22 County Recorder and Clerk's office to obtain a certified copy of the Fictitious Name Statement
23 application for Skin Deep Laser Med Spas, Inc. Exhibit pages 14 through 16.

24 7. I declare that I contacted the California State Board of Equalization to find out if Skin
25 Deep Laser Med Spa had a seller's permit. When it was discovered that Skin Deep Laser Med
26 Spa did not have a seller's permit for its 425 S. Fair Oaks Avenue, Pasadena, CA 91105
27 location, I was instructed to contact the California State Board of Equalization Compliance
28

1 Unit in West Covina, California. I spoke with Mr. Charles Cao and asked for documentation
2 on whether or not a seller's permit was on file with the California State Board of Equalization
3 for the location of 425 South Fair Oaks Avenue, Pasadena, CA 91105. Exhibit pages 17
4 through 18.

5 8. On February 14, 2009, I performed a computer search on the Google search engine
6 for California code. The following website was encountered: <http://www.leginfo.ca.gov>..
7 Research was performed on professional corporations. California Corporations Code Sections
8 13403, 13406 and 13407 were discovered. Exhibit pages 19 through 22.

9 9. On February 14, 2009, I performed a computer search on the Google search engine
10 for California code. The following website was encountered: [http://www.leginfo.ca.gov/cgi-](http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=64736223737+1+0+0&WAIAction=retrieve)
11 [bin/waisgate?WAISdocID=64736223737+1+0+0&WAIAction=retrieve](http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=64736223737+1+0+0&WAIAction=retrieve). Research was
12 performed on the practice of medicine. Business and Professions Code Sections 2052 and
13 2054 were found. Exhibit pages 23 through 25.

14 10. On February 14, 2009, I performed a computer search on the Google search engine
15 for California code. The following website was encountered: <http://www.leginfo.ca.gov>..
16 Research was performed on medical corporations. Business and Professions Code Sections
17 2408 and 2409 were found. Exhibit pages 26 through 27.

18 11. On February 28, 2009, while renewing my medical license on the Medical Board of
19 California website, <http://www.medbd.ca.gov/licensee/Index.html>, two subsections under the
20 Licensees section were reviewed. One subsection was entitled "Lasers & Botox". The other
21 subsection was entitled "Medical Spas". Exhibit pages 28 through 33.

22 12. On February 14, 2009, I reviewed the Medical Board of California website,
23 http://www.mbc.ca.gov/licensee/fictitious_name_questions.html. I found the Fictitious Name
24 Permit—Frequently Asked Questions section. Exhibit, pages 34 through 44.

25 13. I declare that this is a true and complete copy of the February 28, 2007 letter written by
26 Petitioner's attorney, David Hong to Respondent's previous attorney, Brandon Tesser. Exhibit
27 pages 45 through 47.

1 14. I declare that this is a true and complete copy of the March 21,2007 letter written by
2 Petitioner's attorney, David Hong to Respondent's previous attorney, Brandon Tesser. Exhibit
3 pages 48 through 57.

4 The undersigned being warned that willful false statements and the like are
5 punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful
6 false statements and the like may jeopardize the validity of the application or document or
7 any registration resulting therefrom, declares that all statements made of her own knowledge
8 are true; and all statements made on information and belief are believed to be true.

9 I declare under penalty of perjury under the laws of the State of California
10 and the laws of the United States of America that the above is true and correct.

11 Executed on March 5, 2009 in South Pasadena, California.

12
13 DATED: March 5, 2009

14 In the interests of justice and efficiency.

15 Respectfully,

16 By:/jeannette martello, m.d./

17 Jeannette Martello, M.D.

18 Respondent

In Pro Per

TESSER & RUTTENBERG

ATTORNEYS AT LAW

12100 WILSHIRE BOULEVARD, SUITE 220

LOS ANGELES, CALIFORNIA 90025

TELEPHONE (310) 207-4022

FACSIMILE (310) 207-4033

March 3, 2008

Via Fax Only (866) 824.8680

David Hong, Esq.

Law Office of David Hong

P.O. Box 2111

Santa Clarita, California 91386-2111

Re: *ACM Enterprises, Inc. v. Jeannette Martello*
Cancellation No. 92044697
Reg. No. 2932593

Dear David:

I just recently noticed that the Facilities and Management Services Agreement ("Agreement") produced by Petitioner in January 2006 is incomplete (see pages 117 and 118 of Petitioner's 1-24-06 production). You only produced the first and last pages of what appears to be a 14 page document. Please send me a complete copy of the Agreement at your earliest convenience.

However, be advised that if we do not receive a complete copy of the Agreement within the next seven days, we will be forced to compel its production *via* a motion before the TTAB. I trust this will not be necessary under the circumstances, and thank you in advance for your anticipated courtesy and cooperation.

Very truly yours,



Brandon M. Tesser

BMT:ws

TESSER & RUTTENBERG
12100 Wilshire Boulevard, Suite 220
Los Angeles, California 90025
TEL: (310) 207-4022
FAX: (310) 207-4033

FACSIMILE TRANSMITTAL COVER SHEET

Date: **March 3, 2008**

TO	David Hong, Esq.
FAX NUMBER	(866) 824-8680
RE	ACM Enterprises v. Jeanette Martello
FROM	Brandon M. Tesser
DOCUMENT SENT	Letter dated March 3, 2008

This Transmission, Including Cover Sheet, Consists of 2 Pages

COMMENTS:

THIS FACSIMILE IS CONFIDENTIAL AND PRIVILEGED AND INTENDED FOR THE ADDRESSEE ONLY. IF YOU ARE NOT THE ADDRESSEE, PLEASE NOTIFY THE SENDER AND DESTROY THIS FACSIMILE AND ALL COPIES. THANK YOU.

TRANSMISSION VERIFICATION REPORT

TIME : 03/03/2008 16:36
NAME : TESSER & RUTTENBERG
FAX : 3102074033
TEL : 3102074022

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
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MODE

03/03 16:35
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STANDARD
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TESSER & RUTTENBERG
12100 Wilshire Boulevard, Suite 220
Los Angeles, California 90025
TEL: (310) 207-4022
FAX: (310) 207-4033

FACSIMILE TRANSMITTAL COVER SHEET

Date: March 3, 2008

TO	David Hong, Esq.
FAX NUMBER	(866) 824-8680
RE	ACM Enterprises v. Jeanette Martello
FROM	Brandon M. Tesser
DOCUMENT SENT	Letter dated March 3, 2008

This Transmission, Including Cover Sheet, Consists of 2 Pages

COMMENTS:

Brandon Tesser

From: David Hong [david_hong@sbcglobal.net]
Sent: Monday, March 03, 2008 6:19 PM
To: Brandon Tesser
Subject: ACM v Martello

Re: Client: ACM Enterprises, Inc. DBA Skin Deep Laser Med Spa, Inc.
CANCELLATION NO. 92044697

ACM Enterprises, Inc. vs. Jeannette Martello, M.D.
Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107

Dear Brandon:

This e-mail confirms that you have granted my office until **Wed., March 12, 2008** to respond to your discovery fax letter dated March 3, 2008. I appreciate the extension since I have jury duty starting March 10, 2008.

Note that your letter states that a complete copy of the Facilities and Mgt Services Agreement from Petitioner's 1-24-2006 document production would need to be produced by seven days of the March 3, 2008 letter or March 10, 2008.

If this is not correct, please advise.

In response to my inquiry of the reason for further production of the entire document, you stated relevance to the issue of standing (i.e. whether ACM Enterprises had the proper standing for this TTAB proceeding).

I will review your March 3, 2008 letter and the applicable discovery rules to respond. You stated that a redacted version of the Facilities and Management Services Agreement may be acceptable to keep confidential the financial terms between Dr. Berger and ACM.

I also noted that Dr. Martello still has not yet responded to our repeated requests for discovery, and since this case is in suspension for settlement talks, **it is puzzling that your client is pursuing avenues for continuing litigation.**

Nonetheless, I will respond to your March 3, 2008 letter by March 12, 2008.

I am glad to hear that your wife delivered safely.

Very truly yours,

David Hong

David Hong, Esq.,

3/4/2008

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LAW OFFICE OF DAVID HONG

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Patent, Trademark, Copyright, Trade Secret &
Related Causes

March 12, 2008

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220
Los Angeles, CA 90025

VIA MAIL & E-MAIL PDF LETTER: btesser@tesser-ruttenberg.com

Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
CANCELLATION NO. 92044697
ACM Enterprises, Inc. vs. Jeannette Martello, M.D.
Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107

Dear Brandon:

This letter follows my March 3, 2008 e-mail letter in response to your March 3, 2008 facsimile letter regarding your supplemental request for the production of the complete copy of the Feb. 1, 2004 Facilities and Management Services Agreement between Berger Medical Corporation and Skin Deep Laser Med Spa, Inc. ("Agreement").

ACM did not produce the entire Agreement in view of the confidential nature of its contents; however, to comply with good faith efforts to participate in discovery, the first and last pages of this Agreement were produced (see Pet. Doc. Prod. 1-24-2006, pages 117 and 118) to identify the existence of this Agreement and to not waive any confidentiality of its contents.

Your March 3, 2008 facsimile letter failed to give any reasons for a further production. I remind you of your duty to make a good faith effort, by conference or correspondence, to resolve with the other party or attorney the issues presented in a motion to compel a further production of documents. See **37 CFR § 2.120(e) and TBMP 523.02**.

After receiving your March 3, 2008 facsimile letter, I called you to ask why you needed the full Agreement. In response, you stated that this document was relevant to the issue of standing (i.e. whether ACM Enterprises had the proper standing for this TTAB proceeding) and other reasons, but you did not provide any other reasons.

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
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Response to Respondent's March 3, 2008 Request for Supplemental Document Production:

In response, my client reasserts its objections to the Dec. 20, 2005 First Set of Request for Production of Documents propounded by the Respondent, which were properly presented in Petitioner's Jan. 24, 2006 response. Petitioner will not be providing a complete version of its Feb. 1, 2004 Agreement.

TBMP 402.02 Limitations on Right to Discovery

The right to discovery is not unlimited. Even if the discovery sought by a party is relevant, it will be limited, or not permitted, where, inter alia, it is unreasonably cumulative or duplicative; or is unduly burdensome or obtainable from some other source that is more convenient, less burdensome, or less expensive; or "where harm to the person from whom discovery is sought outweighs the need of the person seeking discovery of the information."

For example, in those cases where complete compliance with a particular request for discovery would be unduly burdensome, the **Board may permit the responding party to comply by providing a representative sampling of the information sought, or some other reduced amount of information which is nevertheless sufficient to meet the propounding party's discovery needs.** (emphasis added).

However, without waiving the above objections or waiving the right to confidentiality of this Agreement, I am providing a redacted page 4 and the following selection from the Feb. 2004 Agreement to show that ACM has proper standing in this Trademark Cancellation Proceeding:

From Page 4 of the Agreement:

3.9 License to Use Trademarks and Trademarks of Company. Doctor's use of any trademark, trade name, service mark, insignia, slogan, emblem, symbol, design or other identifying characteristic owned by or associated with Company, or any of its subsidiaries or affiliates (collectively, "Company Marks") shall be subject to the written approval of Company. Doctor acknowledges both before and after the expiration of this Agreement the exclusive right of Company to use or to grant others the right or license to use any Company Marks. Doctor acknowledges that use of such Company Marks by Doctor are granted at absolute discretion of the Company, and such use shall terminate immediately upon written notice from Company.

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
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See the attached three pages of supplemental document production dated March 12, 2008. The e-mail copy of this letter has an attached PDF file. Note the **CONFIDENTIAL designation as required by the TTAB Confidentiality Order**, dated Nov. 28, 2006, Sec. 1: Classes of Protected Information.

To further clarify, please see Petitioner's Jan. 24, 2006 Response to Respondent's Special Interrogatory No. 4, which has been reproduced in part:

For the Pasadena, CA Location:

The medical practice is Berger Medical Corporation DBA Skin Deep Laser Med Spa, a Medical Corporation, which is a California Corporation and was incorporated on Jan. 7, 2004 with a registered office of 425 S. Fair Oaks Avenue, Suite B, Pasadena, CA 91105.

Dr. Saul Berger, M.D. is the 100% shareholder of Berger Medical Corporation DBA Skin Deep Laser Med Spa, a Medical Corporation; Dr. Saul Berger, MD serves as Director and Chief Executive Officer, and Mr. Colin Hurren serves as Director, Secretary, and Chief Financial Officer.

ACM Enterprises, Inc. DBA Skin Deep Laser Med Spa, Inc. is a California Corporation, incorporated in Nov. 19, 1991 as "Once in a Lifetime Entertainment, Inc." and was subsequently renamed "ACM Enterprises, Inc."

ACM Enterprises, Inc. DBA Skin Deep Laser Med Spa, Inc. is the facilities and management service company to Berger Medical Corporation DBA Skin Deep Laser Med Spa, a Medical Corporation.

This information properly answers your inquiry regarding relevance and standing of ACM in this proceeding against Dr. Martello and fulfills my client's duty of making a good faith effort

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
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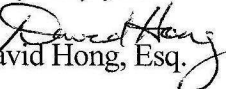
in responding to a discovery request. If you have other discovery issues, please do not hesitate to contact me.

Regarding Settlement:

We are currently in suspension for settlement purposes. In our March 3, 2008 telephone conference, you stated you wanted the complete Facilities and Services Agreement to determine all issues for your client; however, you did not identify any other issues other than standing. With the standing issue settled, I again suggest that we schedule mediation for this case.

In my last patent and trademark case, I had a good experience with retired Fed. Judge John L. Wagner of Judicate West to mediate, and Judge Wagner was very effective in getting both sides to come to a reasonable business resolution of disputes. If Dr. Martello has a bone fide intention to use this suspension period to settle, I suggest that we coordinate calendars to select an appropriate date with Judge Wagner or another skilled mediator.

Very truly yours,


David Hong, Esq.

Encl: 3 page Supplemental Doc. Prod, dated March 12, 2008.

(b) The medical staff bylaws shall not interfere with the independent rights of the medical staff to do any of the following, but shall set forth the procedures for:

(1) Selecting and removing medical staff officers.

(2) Assessing medical staff dues and utilizing the medical staff dues as appropriate for the purposes of the medical staff.

(3) The ability to retain and be represented by independent legal counsel at the expense of the medical staff.

(c) With respect to any dispute arising under this section, the medical staff and the hospital governing board shall meet and confer in good faith to resolve the dispute. Whenever any person or entity has engaged in or is about to engage in any acts or practices that hinder, restrict, or otherwise obstruct the ability of the medical staff to exercise its rights, obligations, or responsibilities under this section, the superior court of any county, on application of the medical staff, and after determining that reasonable efforts, including reasonable administrative remedies provided in the medical staff bylaws, rules, or regulations, have failed to resolve the dispute, may issue an injunction, writ of mandate, or other appropriate order. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the **Code** of Civil Procedure.

2283. The regular practice of medicine in a licensed general or specialized hospital having less than five physicians and surgeons on the medical staff, which does not have rules established by the board of directors thereof to govern the operation of the hospital, which rules include, among other provisions, all of the following, constitutes unprofessional conduct:

(a) Provision that membership on the medical staff shall be restricted to physicians and surgeons and other licensed practitioners competent in their respective fields and worthy in professional ethics. In this respect the division of profits for professional fees in any manner shall be prohibited and any such division shall be cause for exclusion from the staff.

(b) Provision that adequate and accurate medical records be prepared and maintained for all patients.

2284. (a) A licensed physician and surgeon or a licensed podiatrist, or a group of physicians and surgeons or podiatrists, or a medical or podiatry corporation shall not share in any fee charged by an acupuncturist or receive any consideration from or on behalf of such acupuncturist for any referral or diagnosis.

(b) A licensed physician and surgeon or podiatrist shall not employ more than one acupuncturist.

(c) A group of physicians and surgeons or podiatrists, or a medical or podiatry corporation, shall not employ more than one acupuncturist for every 20 practitioners in such group or corporation.

2285. The use of any fictitious, false, or assumed name, or any name other than his or her own by a licensee either alone, in conjunction with a partnership or group, or as the name of a professional corporation, in any public communication, advertisement, sign, or announcement of his or her practice without a fictitious-name permit obtained pursuant to Section 2415 constitutes unprofessional conduct. This section shall not apply to the following:

(a) Licensees who are employed by a partnership, a group, or a professional corporation that holds a fictitious name permit.

(b) Licensees who contract with, are employed by, or are on the staff of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(c) An outpatient surgery setting granted a certificate of accreditation from an accreditation agency approved by the medical board.

(d) Any medical school approved by the division or a faculty practice plan connected with the medical school.

2286. It shall constitute unprofessional conduct for any licensee to violate, to attempt to violate, directly or indirectly, to assist in or abet the violation of, or to conspire to violate any provision or term of Article 18 (commencing with Section 2400), of the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), or of any rules and regulations duly adopted under those laws.

2287. The purchase, sale, or barter, or offering to purchase, sell, or barter any medical or podiatric degree, or any degree, diploma, certificate, affidavit, transcript, or other evidence made or purporting to be made, pursuant to any laws regulating the licensure of persons under this chapter, or any preceding medical practice act or for use in connection with the granting of any certificates or diplomas or the purchase, procurement, or altering in any material regard, with fraudulent intent, a diploma, certificate, affidavit, transcript, or other evidence required for issuing any certificate or diploma that has been purchased, fraudulently issued, counterfeited, or materially altered constitutes unprofessional conduct. The attempt to or conspiring to violate this section also constitutes unprofessional conduct.

2288. The impersonation of any applicant or acting as proxy for any applicant in any examination required under this chapter for a certificate constitutes unprofessional conduct.

2289. The impersonation of another licensed practitioner or permitting or allowing another person to use his or her certificate to engage in the practice of medicine or podiatric medicine constitutes unprofessional conduct.

2290. The provisions of Article 4 (commencing with Section 580) of Chapter 1, relating to frauds of medical records, degrees, diplomas, certificates, and transcripts are not affected by the provisions of this article and, so far as any act is a crime within their scope, such provisions control over the provisions of this article.

2290.5. (a) (1) For the purposes of this section, "telemedicine"

constitute unprofessional conduct under any statute or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by such statutes and regulations to the same extent as a licensee under this chapter.

2411. Notwithstanding any other provision of law, the offering and operation by a medical corporation of a health care service plan licensed pursuant to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety **Code** is hereby authorized. For such purpose a medical corporation may employ, or enter into contracts or other arrangements with, any person or persons authorized to practice any of the healing arts, but no such employment, contract, or arrangement shall provide for the rendering, supervision, or control of professional services other than as authorized by law.

2412. The Division of Licensing may adopt and enforce regulations to carry out the purposes and objectives of this article and the Moscone-Knox Professional Corporation Act including regulations requiring (a) that the bylaws of a medical or podiatry corporation shall include a provision whereby the capital stock of such corporation owned by a disqualified person (as defined in Section 13401 of the **Corporations Code**), or a deceased person, shall be sold to the corporation or to the remaining shareholders of such corporation within such time as such regulations may provide, and (b) that a medical or podiatry corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

2413. This article shall apply to medical **corporations** which have physicians and surgeons licensed by the Osteopathic Medical Board of California as shareholders, officers, and directors only to the extent that this article is not in conflict with or inconsistent with Section 2454.

2415. (a) Any physician and surgeon or any doctor of podiatric medicine, as the case may be, who as a sole proprietor, or in a partnership, group, or professional corporation, desires to practice under any name that would otherwise be a violation of Section 2285 may practice under that name if the proprietor, partnership, group, or corporation obtains and maintains in current status a fictitious-name permit issued by the Division of Licensing, or, in the case of doctors of podiatric medicine, the California Board of Podiatric Medicine, under the provisions of this section.

(b) The division or the board shall issue a fictitious-name permit authorizing the holder thereof to use the name specified in the permit in connection with his, her, or its practice if the division or the board finds to its satisfaction that:

(1) The applicant or applicants or shareholders of the professional corporation hold valid and current licenses as physicians and surgeons or doctors of podiatric medicine, as the case may be.

(2) The professional practice of the applicant or applicants is wholly owned and entirely controlled by the applicant or applicants.

(3) The name under which the applicant or applicants propose to

practice is not deceptive, misleading, or confusing.

(c) Each permit shall be accompanied by a notice that shall be displayed in a location readily visible to patients and staff. The notice shall be displayed at each place of business identified in the permit.

(d) This section shall not apply to licensees who contract with, are employed by, or are on the staff of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety **Code** or any medical school approved by the division or a faculty practice plan connected with that medical school.

(e) Fictitious-name permits issued under this section shall be subject to Article 19 (commencing with Section 2420) pertaining to renewal of licenses, except the division shall establish procedures for the renewal of fictitious-name permits every two years on an anniversary basis. For the purpose of the conversion of existing permits to this schedule the division may fix prorated renewal fees.

(f) The division or the board may revoke or suspend any permit issued if it finds that the holder or holders of the permit are not in compliance with the provisions of this section or any regulations adopted pursuant to this section. A proceeding to revoke or suspend a fictitious-name permit shall be conducted in accordance with Section 2230.

(g) A fictitious-name permit issued to any licensee in a sole practice is automatically revoked in the event the licensee's certificate to practice medicine or podiatric medicine is revoked.

(h) The division or the board may delegate to the executive director, or to another official of the board, its authority to review and approve applications for fictitious-name permits and to issue those permits.

(i) The California Board of Podiatric Medicine shall administer and enforce this section as to doctors of podiatric medicine and shall adopt and administer regulations specifying appropriate podiatric medical name designations.

2416. Physicians and surgeons and doctors of podiatric medicine may conduct their professional practices in a partnership or group of physician and surgeons or a partnership or group of doctors of podiatric medicine, respectively. Physician and surgeons and doctors of podiatric medicine may establish a professional partnership that includes both physician and surgeons and doctors of podiatric medicine, if both of the following conditions are satisfied:

(a) A majority of the partners and partnership interests in the professional partnership are physician and surgeons or osteopathic physician and surgeons.

(b) Notwithstanding Chapter 2 (commencing with Section 15001) of Title 1 of the **Corporations Code**, a partner who is not a physician and surgeon shall not practice in the partnership or vote on partnership matters related to the practice of medicine that are outside his or her scope of practice. All partners may vote on general administrative, management, and business matters.

2417. (a) If the Department of Insurance has evidence that a business is being operated in violation of this chapter, Part 4 (commencing with Section 13400) of Division 3 of the **Corporations Code**, or Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety **Code**, and that the business may be in violation of Section 1871.4 of the Insurance **Code** or Section 549 or 550 of the Penal **Code**, then the department shall report the business, and any